

Respondent.

DECISION

Procedure

Under 1 CSR 15-3.446(6)(A)¹, we may decide this case in favor of the Director if he establishes facts that entitle the Director to a favorable decision and Hill does not genuinely

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

dispute. Facts may be established by admissible evidence such as a stipulation, pleading of the adverse party, discovery response of the adverse party, affidavit, or any other evidence admissible under law.² The Director's motion is accompanied by an affidavit regarding Hill's licensure status and by authenticated court records. The following facts, based on this admissible evidence, are not in dispute.

Findings of Fact

1. Hill holds a peace officer license issued by the Director that is current and active and was so at all times relevant herein.
2. On November 6, 2013, in the Circuit Court of Miller County, Hill entered a plea of guilty to the Class C felony of drug possession in violation of § 195.202. He committed this crime by possessing methamphetamine on June 20, 2012.
3. On March 5, 2014, in the Circuit of Miller County, Hill pled guilty to the Class A misdemeanor of careless and imprudent driving (involving an accident) in violation of § 304.012 and the Class B misdemeanor of driving while drug intoxicated in violation of § 577.010. Hill was sentenced to 10 days in the county jail on each offense, to run concurrently. He committed these crimes on June 20, 2012.
4. Also, on March 5, 2014, the court ordered Hill to attend post-conviction drug treatment and to pay restitution and recoupment. He received a suspended imposition of sentence and was placed on five years' supervised probation with special conditions.

Conclusions of Law

We have jurisdiction to decide this case.³ The Director has the burden to prove, by a preponderance of the evidence, that Hill committed an act for which the law allows discipline.⁴

² 1 CSR 15-3.446(5)(B).

³ Section 590.080.2. Statutory references are to RSMo Supp. 2013 unless otherwise noted.

⁴ See *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012) (dental licensing board demonstrates "cause" to discipline by showing preponderance of evidence).

The Director's complaint alleges there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]⁵

Section 556.016⁶ defines a criminal offense as follows:

1. An offense defined by this code or by any other statute of this state, for which a sentence of death or imprisonment is authorized, constitutes a **“crime”**. Crimes are classified as felonies and misdemeanors.

The elements of the crime of possession of a controlled substance under Missouri law are set forth in § 195.202:

1. Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.
2. Any person who violates this section with respect to any controlled substance except thirty-five grams or less of marijuana . . . is guilty of a class C felony.
3. Any person who violates this section with respect to not more than thirty-five grams of marijuana . . . is guilty of a class A misdemeanor.

The offense of driving while intoxicated is set out in § 577.010:

1. A person commits the crime of “driving while intoxicated” if he operates a motor vehicle while in an intoxicated or drugged condition.
2. Driving while intoxicated is for the first offense, a class B misdemeanor...

⁵ In his complaint, the Director also referenced § 590.080.1(3) as cause for discipline but did not include that provision in the motion, so we consider it abandoned.

⁶RSMo 2000.

Careless and imprudent driving is defined in reference to the requirements of § 304.012,⁷ which provides:

1. Every person operating a motor vehicle on the roads and highways of this state shall drive the vehicle in a careful and prudent manner and at a rate of speed so as to not endanger the property of another or the life or limb or any person and shall exercise the highest degree of care.
2. Any person who violates the provisions of this section is guilty of a class B misdemeanor, unless an accident is involved then it shall be a class A misdemeanor.

We find that Hill committed the three criminal offenses to which he pled guilty and was finally adjudicated. Since Hill did not answer the complaint or the Director's motion, no genuine dispute exists as to these facts. The Director is entitled to summary decision. Accordingly, we find Hill is subject to discipline under § 590.080.1(2).

Summary

There is cause to discipline Hill's license under § 590.080.1(2). We grant the Director's motion for summary decision and cancel the hearing.

SO ORDERED on December 8, 2014.

\\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner

⁷ RSMo 2000.